IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10759 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

qua A.R. Dave, J.
1 to 5 No

qua K.M. Mehta, J.
1-2 Yes
3-4 No
5 To be circulated to all the relevant Tribunals in the State of Gujarat and also to send to the Finance Dept., Union of India with a direction that the judgment may be circulated to CEGAT (qua judgment of K.M. Mehta, J.)

DHANLAXMI TEXTURISERS

Versus

UNION OF INDIA THRO' SECRETARY

Appearance:
1. Special Civil Application No. 10759 of 2002
MR PARESH M DAVE for Petitioner No. 1-2
MR DN PATEL for Respondent No. 1-4

CORAM : MR.JUSTICE A.R.DAVE
and

MR.JUSTICE K.M.MEHTA

Date of decision: 27/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

RULE. Service of rule is waived by learned Senior Central Government Standing Counsel Shri D.N. Patel for the respondents.

The petitioners have challenged the validity of order dated 18th May, 2002 passed by the CEGAT.

Learned advocate Shri Paresh M. Dave appearing for the petitioners has submitted that the said order passed by the CEGAT is unjust, improper and illegal because while passing the impugned order the CEGAT had ignored its view expressed in the case of WHATTS ELECTRONICS PVT. LTD. Vs. COLLECTOR OF CENTRAL EXCISE, KOCHI reported in 1992(48) ECR 286(Tribunal). It has been also submitted by him that the view expressed in WHATTS ELECTRONICS PVT. LTD. Vs. COLLECTOR OF CENTRAL EXCISE was followed by the Tribunal in the case of SHREE CABLES & CONDUCTORS LTD Vs. COMMISSIONER reported in 2001 (135) E.L.T. 1110. It has been thereafter submitted by him that the view expressed by the Tribunal in the case of SHREE CABLES & CONDUCTORS LTD. Vs. COMMISSIONER has been confirmed by the Hon'ble Supreme Court as Civil Appeal No. D15220 of 1999 filed by Commissioner of Central Excise, Bhopal against the said order was dismissed by the Hon'ble Supreme Court on 19.11.1999.

In pursuance of notice issued by this Court, learned Senior Central Government Standing Counsel Shri D.N. Patel has appeared for the respondent authorities. Looking to the fact that the earlier view expressed by the Tribunal in the case of SHREE CABLES & CONDUCTORS LTD. Vs. COMMISSIONER has been now confirmed by the Hon'ble Supreme Court by dismissing an appeal filed against the said order, he had to reluctantly agree to the fact that the impugned order passed by the Tribunal cannot be justified.

Looking to the above referred undisputed fact, in our opinion, the Tribunal was in error in taking a different view than the one which it had taken in the case of WHATTS ELECTRONICS PVT. LTD Vs. COLLECTOR OF CENTRAL EXCISE, KOCHI and in the case of SHREE CABLES & CONDUCTORS LTD. Vs. COMMISSIONER. Possibly the Tribunal was not aware of the fact that the view

expressed by it in the case of SHREE CABLES & CONDUCTORS ETC had been confirmed by the Hon'ble Supreme Court. Even if the said fact was not known to the Tribunal, in our opinion, the Tribunal should not have changed its view without assigning any reason or without referring to its earlier view expressed in the case of WHATTS ELECTRONICS PVT. LTD. Vs. COLLECTOR OF CENTRAL EXCISE and SHREE CABLES & CONDUCTORS LTD. Vs. COMMISSIONER.

In view of the above referred undisputed facts, we quash and set aside the impugned order passed by the Tribunal so that the order passed by the Commissioner of Appeals(Surat) can operate.

Rule is made absolute with no order as to costs.

(A.R. DAVE,J.)

(K.M. MEHTA,J.)

(Per : MR.JUSTICE K.M.MEHTA)

1. I had an advantage on going through the opinion expressed by my learned Brother Anil R.Dave, J. allowing the Special Civil Application. I am in respectful agreement with the same. Yet having regard to the nature of issues involved in connection with the jurisdiction of the Tribunal, I wish to place on record some of my views also in the matter.

2. The petitioners have filed this petition for a writ of certiorari or any other appropriate writ, direction or order, quashing and setting aside order No.C.II/1529-54/WZB/2002 dated 18th May, 2002, passed by the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as CEGAT the Tribunal'). The Tribunal by its impugned judgment held that the tribunal do not see how the fact that the goods became entitled to modvat scheme from 20.5.94 has any bearing upon the availability of the exemption under Notification No.1/93 as it existed independently. The Tribunal held that it became available from 25.4.1994, irrespective of the fact that the manufacturers could not avail modvat credit. The Tribunal further held that the exemption was available irrespective of whether modvat credit was availed or not, it was therefore possible to avail of the notification with regard to the goods in question with effect from 25.4.1994. In view of the same, the Tribunal has upheld the order of the Commissioner (Appeals) in

this behalf.

3. The facts giving rise to this petition are as under:-

3.1 The petitioners is a small scale industry. The petitioners have been the manufacturers of Polyester Texturised Yarns falling under Heading No.54.03 of the Central Excise Tariff Act, 1985. The petitioners factory situated at Surat Central Excise Commissionarate.

3.2 The Central Government issued a notification being Notification No.156/85 dated 13th July, 1985, under Rule 56-A of the Central Excise Rules, 1944 (hereinafter referred to as `the Rules'). The Central Government has specified by the said notification that inputs and the final products namely the above yarns for which proforma credit scheme under Rule 56-A was made applicable. Though the manufacturers of the yarns in question were thus allowed benefit of Proforma Credit Scheme under which also credit of duties paid on the inputs was allowed while paying duty on the final products, this Scheme was not under Rule 57-A (i.e. Modvat on inputs) or under Rule 57-Q (i.e. Modvat on capital goods).

3.3 The Central Government thereafter issued a Notification No.1/93 dated 28th February, 1993, allowing thereunder slab-wise exemption to goods specified under the Notification. One of the conditions was about availment of Modvat credit for inputs under Rule 57-A and/or capital goods under Rule 57-A of the Rules. The yarns falling under Heading No.54.03 were not covered under this Notification.

3.4 The Central Government thereafter issued another Notification No.90/94 dated 25th April, 1994, by which various goods came to be added in Notification No.1/93 and by this amendment, yarns falling under Heading No.54.03 also came to be included in this Notification. The Central Government omitted/rescinded Rule 56-A and all the Notifications issued thereunder and simultaneously issued Notification No.24/94 under rule 57-A including therein yarns falling under Heading No.54.03.

3.5 Thus, from 20th May, 1994, yarns falling under heading No.54.03 the goods in question were covered under Modvat Scheme and, therefore, the yarns manufacturers like the petitioners became eligible for availing the small scale exemption from first slab with effect from 20.5.1994. But the petitioners and the like

manufacturers were not aware about the above amendments and therefore they kept on clearing goods at full rate of duty without availing any exemption or concession of the above Notification. The petitioners and most of the manufacturers on coming to know about availability of exemption, opted for the benefit of Notification No.1/93 in May 1994 or thereafter, but till then they were paying duty at the normal rate of excise.

3.6 The Superintendent of Central Excise issued a show-cause-notice to the petitioners somewhere in January 1995 demanding differential duty on the ground that all the clearances made from 1.4.1994 were to be taken into account for computing clearances under various slabs of Notification No.1/93 even though such goods were removed on payment of duty at full rate. The Assistant Commissioner of Central Excise, Surat, by his order passed in March 1996 confirmed the demand against the petitioners.

3.7 Being aggrieved and dissatisfied with the said order, the petitioners filed appeal before the Commissioner of Appeals. The Commissioner of Appeals vide his order dated 13th December, 1996, allowed the petitioners' appeal along with 21 other appeals of similarly situated manufacturers holding that a number of similar appeals involving similar manufacturers and similar issues were allowed by him in the case where CEGAT (Tribunal) has taken the view that from the date on which manufacturer opted for small scale exemption would be reckoned and the goods cleared at full rate of duty would not be computed in cases like the present one.

3.8 The Commissioner of Central Excise, Surat filed appeal against the above order of the Commissioner (Appeals) by which 22 appeals including the appeal of the petitioners were filed.

3.9 The hearing of the above 22 appeals was fixed before the CEGAT on 25th January, 2002. It appears that the representative of the petitioners did not remain present before the CEGAT because by that time earlier in the case of Watts Electronics Pvt.Ltd. - 1993 (48) ECR 286, Commissioner of Central Excise, Coimbatore vs. Sri Kumaran Spinners (P) Ltd. - 1997 (73) ECR 894, Commissioner, Coimbatore vs. Sellammal Spinners - 1998 (104) ELT 685 and Sharma Textiles - 2001 (134) ELT 421 the tribunal had already taken the view in favour of the trade and these decisions including the one in case of Sharma Textiles (supra) were reported and therefore the petitioners did not attend the personal hearing before

the CEGAT.

3.10 The Tribunal passed order on 18th May, 2002, thereby allowing appeals of the department and setting aside the order of the Commissioner (Appeals) on the ground that the value of clearances from 25.4.1994 shall be taken into account under Notification No.1/93, without referring to the earlier binding judgments.

4. Mr.Paresh Dave, learned advocate for the petitioners while assailing the aforesaid order of the Tribunal has made following two submissions:

4.1 He submitted that the Tribunal in the present case is not legally correct particularly the Tribunal did not follow its earlier binding decision which were already available. It was imperative on the part of the Tribunal to decide the matter differently then the matters which were already decided. The tribunal must refer to their earlier decision on question of law and they may give any reason as to why they deviate from the said principle. Alternatively, learned counsel submitted that the action of the CEGAT and also that of the Commissioner of Surat who has decided to file the appeals in 22 cases against the petitioners are arbitrary and in violation of Article 14 of the Constitution of India.

4.2 As regards first issue is concerned, learned counsel submitted that the action of the CEGAT in allowing the appeals of the department when the issue involved therein was settled by the CEGAT itself in favour of the trade is unreasonable and unjustified. He submitted that when the same Bench of the CEGAT has already allowed appeals of similarly situated manufacturers of Mumbai, there was no reason why a different view should be taken in case of appeals of Surat Commissionarate in the case of petitioners. The learned counsel further submitted that the absence of petitioners before the CEGAT is also no ground for taking a different view when the same Bench had taken a decision in favour of the trade and, therefore, the Tribunal cannot arrived at contrary view in this behalf.

4.3 The learned advocate for the petitioners has further submitted that in any case of the matter the view expressed in Watts Electronics Pvt.Ltd. (supra) was followed by the Tribunal in the case of Shree Cables & Conductors Ltd. Vs. Commissioner reported in 2001 (135) E.L.T. 1110.

4.4 The learned counsel has invited our attention to

a case reported in 2002 (139) ELT A.310 of Hon'ble Supreme Court by which it has been reported that the Hon'ble Supreme Court by its order dated 19th November, 1999, after condoning the delay dismissed the Appeal No.D 15220/99 filed by the Commissioner of Central Excise, Bhopal against the order of CEGAT in the case of Shree Cables & Conductors Ltd. (supra).

4.5 The learned counsel further submitted that the impugned judgment following the ratio of the decision of the Tribunal in the case of Watts Electronics Pvt.Ltd. (supra) has held that the benefit of Notification No.1/93 was to be availed of from the first day of financial year and assessee can avail of the said benefit of the notification even in the middle of the financial year also. He submitted that in view of this order of the Hon'ble Supreme Court the entire controversy is settled and the present decision of the Tribunal is therefore contrary to and inconsistent with not only earlier order of the Tribunal but the earlier order which has already been confirmed by the Hon'ble Supreme Court.

5. In pursuance of notice issued by this Court, Mr.D.N.Patel, learned Senior Central Government Standing Counsel has appeared for the respondent authorities. Looking to the fact that the earlier view expressed by the Tribunal in the case of Shree Cables & Conductors Ltd. vs. Commissioner (supra) has been now confirmed by the Hon'ble Supreme Court by dismissing an appeal filed against the said order, he had to reluctantly agree to the fact that the impugned order passed by the Tribunal cannot be justified.

6. Looking to the above referred undisputed fact, in my opinion, the Tribunal has clearly committed a mistake in taking a different view than the one which it had taken in the case of Watts Electronics Pvt. Ltd. vs. Collector of Central Excise, Kochi and in the case of Shree Cables & Conductors Ltd. Vs. Commissioner. Possibly the Tribunal was not aware of the fact that the view expressed by it in the case of Shree Cables & Conductors Ltd. had been confirmed by the Hon'ble Supreme Court.

7. In my view, even if the said fact was not known to the Tribunal, the Tribunal ought not to have changed its view i.e. the view taken in favour of the department without assigning any reason or without referring to its earlier view expressed in the case of Watts Electronics Pvt.Ltd. vs. Collector of Central Excise and Shree Cables & Conductors Ltd. vs. Commissioner in which the

Tribunal has considered entire facts of the case and decide the matter in favour of the trade.

8. In my view, the Tribunal created under provisions of the Act. The power vested under the provisions of the Act particularly Sec.35, 35(a) which provides procedure of an appeal, sec.35(b) provides appeal to a tribunal and sec.35(c) provides how the order of the tribunal is to be considered puts tribunal being final fact finding authority under the provisions of the Act. The Tribunal is naturally looked upon both by the trade and the revenue as a final fact finding authority. Even the decision of the tribunal on question of law is binding on the lower authorities as well trading public if there is no contrary judgment of High Court or the Hon'ble Apex Court. However, if the tribunal were to review its previous decision simply on the ground that another view is possible, the litigant public may be encouraged to think that it is always worthwhile taking a chance with the highest fact finding authority under the Act. Normally previous decision of the tribunal should have been followed by the tribunal. However there are certain principles on which previous decision cannot be followed. In this behalf I may refer to paragraph 25.105 on page 2674 from the H.M.Seervai (Constitutional Law of India) Fourth Edition, Volume 3 where the learned Author has discussed the terms of "precedent". The learned Author pointed out and stated that on what circumstances the Court or other higher authority may not follow earlier precedent.

"25.105 If Art.141 embodies, as a rule of law, the doctrine of precedent on which our judicial system is based, it is necessary to set out briefly the circumstances under which precedents would not be binding on courts. This question was elaborately considered in Young v. Bristol Aeroplane Co.Ltd. and it is submitted that its effect is accurately set out in Halsbury. The decisions of the Court of Appeal upon questions of law must be followed by the courts of first instance, and are, as a general rule, considered by the Court of Appeal to be binding on itself, until a contrary determination has been arrived at by the House of Lords. There are, however, three exceptions to this rule, namely, (1) the court is entitled and bound to decide which of two conflicting decisions of its own it will follow; (2) the court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot, in its opinion,

stand with a decision of the House of Lords; (3) the court is not bound to follow a decision of its own if given per incuriam."

8.1 The Salmond on Jurisprudence, 12th Edition page 148 to 156 under heading "Circumstances destroying or weakening the binding force of precedent" also gives reasons as to under what circumstances previous precedent may not follow:

(1) Ignorance of statute.
(2) Inconsistency with earlier decision of higher court.
(3) Inconsistency between earlier decisions of the same rank.
(4) Precedents sub silentio or not fully argued.
(5) Decisions of equally divided courts.
(6) Errorneous decisions.

8.2 In my view, these paragraphs set out the correct principle on which earlier precedent cannot be followed. The tribunal ought to have considered these principles before deviating its earlier decision in this behalf.

8.3 In my view, before the tribunal changed its view, the tribunal must refer to earlier binding decision namely Watts Electronics Pvt.Ltd. (supra), Sri Kumaran Spinners Pvt.Ltd. (supra), Sellammal Spinners (supra) and Sharma Textiles, and if they do not want to follow the decision then they ought to have give cogent & convincing reasons in those cases. The Tribunal has taken the view in favour of the trade whereas in this case the Tribunal had taken the view in favour of the revenue, it was incumbent upon the tribunal to give the cogent and convincing reasons as to why they differ from its earlier view.

9. In view of the above referred undisputed facts, this Court issue a writ of certiorari and quash and set aside the impugned order dated 18th May, 2002, passed by the CEGAT in Appeals No.E/506 to 522, 524 to 528/97. This Court, therefore, issue a writ of mandamus and declare that the actual effect of the benefit of Notification No.1/93 was available to the manufacturer only from 20th May, 1994. This Court also hold that the petitioners were entitled the benefit of Notification No.1/93 by computing the value of clearance from the date on which the petitioners opted for this exemption in the year 1994-95. In view of the same, the Special Civil Application is allowed to that extent. Rule is made

absolute with no order as to costs.

10. As I have allowed this writ petition on first factual legal point, I do not decide the second point Re. Article 14 of the Constitution of India.

(K.M. MEHTA,J.)

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